

Gross charges for teleconferencing services that include the reselling of telephone services are subject to the Telecommunications Excise Tax Act. See 86 Ill. Adm. Code Part 495. (This is a GIL).

February 8, 2002

Dear Xxxxx:

This General Information Letter, issued pursuant to 2 Ill. Adm. Code 1200, is in response to your letter of May 6, 1998 and will confirm our numerous telephone conversations, including our last conversation in September 2001. We are unable to issue a Private Letter Ruling at this time because the issues about which you have inquired, the proper taxation of teleconferencing services, are the subject of ongoing Department consideration. We hope our response will prove helpful, however.

In your letter, you have stated and made inquiry as follows:

PART I. INTRODUCTION

AAA is a corporation organized and existing under and by virtue of the laws of the STATE, with its principal officers located in CITY. BBB is a wholly owned operating subsidiary of AAA.

BBB respectfully requests that the Department of Revenue ('Department') issue a private letter ruling regarding the application of Illinois Telecommunications Excise Taxes to BBB's charges for bridging services provided for audio conferences services where a telecommunications company, other than BBB, provides transport to BBB's bridging equipment ('bridge').

PART II. FACTS

BBB provides audio conferencing services that allow numerous callers to participate in the same telephone conversation from different geographic locations. In order to receive audio conferencing services, a customer (conference leader) calls BBB to reserve a specified date, time and duration for an audio conference. BBB provides the conference leader with a telephone number and a call-specific numeric passcode for participants to use in order to take part in an audio conference.

In some instances, BBB provides participants with both the underlying transmission and bridging services. In other instances, BBB provides only bridging services. This petition only requests a ruling regarding the tax consequences which result in the latter

instances (when BBB provides only bridging services). In these instances, participants use a telecommunications company other than BBB for the transmission service to participate in an audio conference and the conference leader is only paying BBB for 'bridging services.'

Bridging services include much more than merely using BBB's bridges to link participants together on the same audio conference. There are many elements of the service that are provided by BBB employees such as:

- (1) reserving a bridge for a conference leader for a scheduled time, duration and number of participants;
- (2) providing the conference leader with a telephone number in order to reach an AAA bridge and a conference-specific passcode;
- (3) programming the appropriate bridge to verify each participant's passcode at the proper date and time;
- (4) providing assistance if a participant enters an incorrect passcode or calls in at a time other than the scheduled time.

When a participant dials the BBB-provided telephone number, he is connected with BBB's bridge and prompted for the conference's passcode. The bridge verifies the passcode entered by the participant and links him together with all other participants on the audio conference. A participant that enters an incorrect passcode or calls in to a conference other than at the scheduled time is connected with an BBB employee for assistance. Once the participant enters the proper passcode, other participants that are already on the audio conference hear a tone notifying them that a new participant has entered the conference.

BBB has bridges in several states. Bridges located in the State of Illinois are in the cities of *****. Audio conference participants situated in Illinois may be linked together at an BBB bridge located in Illinois *or some other state*. Bridges do not change the form, content or composition of the communications.

BBB's charges for bridging services are a per minute charge based on the number of minutes that participants are connected together on an audio conference. For example, three participants engage in an audio conference; two participants are linked to the audio conference for 10 minutes and one is linked for five minutes. The total bridging service charges billed to the conference leader would be the per minute charge times 25 minutes (2 participants x 10 minutes + 1 participant x 5 minutes).

In the event that an audio conference is scheduled, and the conference leader fails to cancel the conference within 30 minutes of the scheduled start time, the conference leader will be charged a cancellation fee.

BBB's invoice to a participant will separately identify bridging services from all other charges. Each audio conference participant is responsible for paying his own telecommunication service charges (transport charges) to a company other than BBB, including all applicable taxes.

PART III. QUESTIONS PRESENTED - EXCISE TAX

A. Whether BBB's charges for bridging services provided for audio conferences are subject to Illinois Telecommunications Excise tax, where a telecommunications company, other than BBB, provides the transport.

B. If BBB's bridging services are determined to be taxable telephone services under Illinois' Telecommunications Excise tax, under what circumstances are these services taxable?

PART IV. SUGGESTED ANSWERS - EXCISE TAX

A. BBB's charges for bridging services provided for audio conferences are not subject to Illinois Telecommunication Excise tax, where a telecommunications company, other than BBB provides the transport.

B. If BBB's charges for bridging services are determined to be taxable telephone services under the Illinois Telecommunications Excise tax, the services are taxable only if the conference leader's business location is in Illinois

PART V. DISCUSSION OF APPLICABLE LAW AND REGULATIONS - EXCISE TAX

A. Applicable Law

35 ILCS 630 Section 3 states that

'A tax is imposed upon the act or privilege of originating in this State or receiving in this State intrastate telecommunications by a person in this State at the rate of 5% of the gross charge for such telecommunications ...'

35 ILCS 630 Section 4 states that

'A tax is imposed upon the act or privilege of originating in this State or receiving in this State interstate telecommunications by a person in this State at the rate of 5% of the gross charge for such telecommunications ...'

35 ILCS 630 Section 2(a) defines 'Gross Charge' as the

'amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer...'

The above three code sections provide the statutory framework for Regulation 86 Ill. Adm. Code Sec. 495.100, which addresses the taxability of services which are unrelated to the provision of telecommunications transport. This regulation states as follows:

'A retailer may provide services to customers which are not provided in connection with originating or receiving telecommunications. If such

services are not necessary for or directly related to the retailer's provision of telecommunications to customers and the charges for such services are disaggregated and separately identified from other charges, the charges need not be included in 'Gross Charges.' Without limitation, examples of such services not included in 'Gross Charges' are directory advertising, specialized designing and/or engineering services, specialized security measures, and consulting services.

As set forth in the Statement of Facts, this petition requests a ruling in situations where BBB provides a customer with bridging services only. Other telecommunications companies provide the customer with telecommunications service from points of origination to termination. For these customers, bridging services cannot be necessary or directly related to BBB's provision of telecommunications, because BBB is not providing the underlying telecommunication service to these customers.

The regulation provides several examples where a telecommunications company can provide non-taxable services to its customers. Each example listed (specialized designing services, specialized security services, etc.) is non-taxable because it is not provided in connection with originating or receiving a telecommunications service. These examples are 'without limitation,' meaning that other unlisted services (i.e. bridging services) can also be non-taxable as long as they are not provided in connection with originating or terminating telecommunications services.

BBB's invoice presentation will also separately identify bridging services from any other service that may be provided to the customer. Thus, all of the regulation's criteria are met, and BBB's provision of only bridging services should not be taxable.

B. Statement of Additional Authorities

35 ILCS 630 Section 2(c) defines 'Telecommunications' as

'messages or information transmitted through use of local, toll and wide area telephone service, private line services, channel services, telegraph services, teletypewriter, computer exchange services, cellular mobile telecommunications service, specialized mobile radio, stationary two way radio, paging service, or any other form of mobile and portable one-way or two-way communications, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities.'

This definition of telecommunications simply clarifies the type of message or information transmission that is taxable when it is originated or received within the State of Illinois. As stated previously, since bridging services are not being provided by BBB in connection with the origination or receiving of telecommunication services, bridging services should not be subject to the telecommunications excise tax.

There are several Illinois Private Letter Rulings and General Information Letters which conclude that conference calling is taxable when a telecommunications provider *is also providing* telecommunications services to the customer. (See PLR 91-0001, conference

calling taxable where taxpayer purchases and resells telephone service; also see PLR 91-0710, tax applicable when phone service is resold, including charges for managing the conference calls; also see PLR 95-0304, conference calling taxable where taxpayer transmits calls to various U.S. locations; also see PLR 94-0290, conference calls subject to telecommunications excise tax where taxpayer provides communications services on a nationwide basis).

BBB agrees that tax should be applied to conference calling services under these circumstances, and BBB is already applying tax for conference calling services whenever BBB is also providing the telecommunications transport for the callers.

However, these PLRs do not address the narrow issue presented by this ruling request. Whereas the above PLRs entail circumstances where conference calling is provided in conjunction with the provision of telecommunications services to a customer, this ruling request is for situations where *other* telecommunications companies provide the transport, and AAA provides only bridging services.

As stated above, Regulation 86 Ill. Adm. Code Sec. 495.100 provides that where services are not necessary or directly related to the retailer's provision of telecommunications, then charges for such services are not included within the definition of 'Gross Charges.' In this ruling request, bridging services cannot be necessary or directly related to the customers, because BBB is not providing telecommunications services to these customers.

C. Application of Excise Tax to Bridging Services as Telecommunications Services

In the event that BBB's bridging services are regarded as being provided in connection with originating or receiving a telecommunications service under Regulation 86 Illinois Admin. Code Section 495.100, then such bridging services are not taxable unless the business location of the conference leader (the physical address of the conference leader's office) is located within the State of Illinois. This is because BBB's bridging services should be taxed *where the benefit of the service is received* rather than where the bridge performing the service is located.

The application of sales tax in a state where property is received or the benefit of a service is received is a well-settled area of sales tax law. The Commerce Clause of the U.S. Constitution, as developed through a line of U.S. Supreme Court cases through Complete Auto Transit, Inc. v. Brady and Oklahoma Tax Commission v. Jefferson Lines, Inc. is designed to prevent multiple taxation of interstate transactions. As provided below, many states have statutes and regulations in furtherance of this principle.

Illinois Service Occupation Tax Regulation Section 160.101 describes the nature of the Service Use Tax as:

'a privilege tax imposed on the privilege of using, *in this state*, tangible personal property that is received anywhere as an incident to a purchase of service from a serviceman...(emphasis added)'

This principle of imposing tax where the benefit of the service is received is also manifest throughout the several states in the U.S. which impose tax on most services. All such states impose tax where the benefit of the service is received, for example in

the State of Texas where Section 151.011(b) of its tax code reads as follows:

'With respect to a taxable service, 'use' means the derivation *in this state* of direct or indirect benefit from the service...(emphasis added)'

The State of Pennsylvania also taxes various services, and clarifies this principle in its Revenue Pronouncement on taxation of services, Section 9.3 which reads:

'...These services are presumed to be subject to Pennsylvania sales tax if the delivery or benefit of the service occurs in this Commonwealth.'

Consequently, the Illinois Excise Tax cannot be imposed on bridging services simply because the AAA facility conducting the conference call is located within the State of Illinois. The *benefit of the service* must occur within the state for the tax to be applicable. This can only occur when the business location of the conference leader is within the State of Illinois.

For example, assume that a conference leader with a business location in Dallas, Texas contracts with BBB for bridging services. The conference leader normally has no knowledge or interest in the location of the BBB facility which will handle the bridging services. The conference leader will carry out the conference call, and pay all appropriate sales/excise taxes to the other telecommunications companies providing the call transport. The conference leader should not receive another tax bill from the State of Illinois simply because BBB's bridging service facilities are located in Illinois. Further, the potential for multiple state taxation will exist if Texas imposes tax on bridging services based upon the business location of the conference leader receiving the benefit of the bridging services within the State of Texas.

Thus, if BBB's bridging services are regarded as subject to the Illinois Excise Tax, the tax would only be applicable to situations where the conference leader's business location is within the State of Illinois.

To the best of BBB's knowledge, the Department has not previously ruled on the same or similar issue by BBB or a predecessor, nor has BBB previously submitted a ruling request on the same or similar issue.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495, enclosed.

Section 2(c) of the Telecommunications Excise Tax Act defines "telecommunications" as follows:

"Telecommunications", in addition to the meaning ordinarily and popularly ascribed to it, includes, without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter, computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications;

or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiberoptics, laser, microwave, radio, satellite or similar facilities."

Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

The term *amount paid* means the amount charged to the taxpayer's service address in this State regardless of where such amount is billed or paid, 35 ILCS 630(2)(b). "Service address" means the location of telecommunications equipment from which the telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event this may not be a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, service address shall mean the location of a taxpayer's primary use of the telecommunications equipment as defined by telephone number, authorization code, or location in Illinois where bills are sent. See 35 ILCS 630/2(n) and 86 Ill. Adm. Code 495.120.

Teleconferencing represents an especially difficult application of the term "service address". We have discovered that taxpayers are using three methods of calculating the tax. The first is that some taxpayers calculate the Telecommunications Excise Tax based upon the location of the bridging equipment. The second is that some calculate the Telecommunications Excise Tax based upon the customer's billing address. The third is that some consider the teleconference provider to be a user of telecommunications and pay tax to their telecom suppliers.

The multi-state group of tax administrators known as the Streamlined Sales Tax Project (SSTP) is currently examining this question. We understand the alternatives are:

- (1) The telecommunications tax would be based upon the location of the teleconferencer's equipment,
- (2) The telecommunications tax would be based upon the billing address of the customer.

We do not know which option the SSTP will ultimately adopt. For that reason, we suggest that you continue to calculate the tax as you have been doing. When the SSTP adopts a position, the Department of Revenue will promulgate a rule and give it prospective application.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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Associate Counsel

MAJ:msk
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